

## Staying Legal Within the Framework of Anti-Spam Laws

Acquiring new customers, retaining existing customers, or using e-mail marketing for your business is not *dead*. With all the hype and emotion, how does a reputable company perform e-mail marketing within the law? What do the laws say? How does a company obtain e-mail addresses to connect with clients and prospects? What is the definition of unsolicited commercial electronic mail (UCEM)?

As an e-mail marketer, you can use the links below to review the details of the laws and regulations. Work with your e-mail broadcasting provider or attorney to ensure you stay within the law. Make sure you can document where and how you obtained your e-mail addresses.

### Washington State Law

It is fairly simple to follow, and was not pre-empted by the federal CAN-SPAM Act of 2003. Washington State's spam law focuses exclusively on *falsity* and *deception*. Washington State Office of the Attorney General has an extensive website that defines the law, defines commercial e-mail, provides examples of falsity, and other useful information.

Anyone who is planning to deploy a bulk e-mail campaign should consult this site, an attorney, and/or a professional e-mail broadcasting company such as *immedia* before they broadcast: <http://www.atg.wa.gov/junkemail/index.shtml>

Briefly stated, the Washington State law makes it illegal in Washington to send an unsolicited commercial e-mail if the e-mail is sent:

- To a Washington e-mail address OR from a computer located in Washington

And using:

- False information identifying the point of origin of the message or that hides the true origin of the sender (also known as a "False Header")
- False or misleading information in the subject line
- A third party's e-mail address (domain name) without permission

How do you know if your e-mail is deceptive or misleading? Carefully examine the body of the e-mail message as it relates to the e-mail subject line and ask yourself these questions:

- Does it accurately describe what is contained in the e-mail? For example, does a subject line describing "important news about your taxes" contain a message with information about a get-rich-quick scheme?
- Is it a "come-on," attempting to entice you to read the message?
- Does it create a false sense of urgency?
- Does it misrepresent the identity of the sender of the message?

The website goes on to provide examples of subject line content and the body content within those same e-mails.

Washington State defines UCEM differently than the federal CAN-SPAM law does. In general - "Commercial electronic mail message" means an electronic mail message sent for the purpose of promoting real property, goods, or services for sale or lease. It does not mean an electronic mail message to which an interactive computer service provider has attached an advertisement in exchange for free use of an electronic mail account, when the sender has not agreed to such an arrangement.

### **United States Federal CAN-SPAM Law**

The Federal CAN-SPAM law of 2003 is more complex and covers falsity, deception, opt out requirements, advertisement identifications, and sexually oriented material notices. It also prohibits electronically harvesting e-mail addressees, using scripts to generate addresses, falsifying header information, and much more.

The Federal Trade Commission (FTC), along with the Justice Department, *enforces* the CAN-SPAM law.

The Federal Communication Commission (FCC) has banned all unsolicited e-mail messages to wireless devices where the primary purpose is to advertise or promote a commercial product or service. The FCC website also has a list of all domain names (which include cell phone domain addresses) that are prohibited from receiving any type of commercial e-mail. You can download the list from <http://www.fcc.gov/cgb/policy/DomainNameDownload.html>.

None of the bans or laws, federal or state, cover "transactional or relationship" messages, or notices to facilitate a transaction the recipient has already agreed to. If you have an established relationship with the recipient, you may e-mail them. However, if they request, at any time, to be removed from your e-mail list, not to receive messages from you, or not to receive messages of the type you have sent, you must comply.

The federal law requires that you give recipients an opt-out method, a method of being removed from your e-mail list. You must provide a return e-mail address or another Internet-based response mechanism. This mechanism must allow a recipient to ask you not to send future e-mail messages to that e-mail address. You must honor the request.

You may create a "menu" of choices to allow a recipient to opt-out of certain types of messages. But, you must include the option at the end of any commercial messages from the sender. You must comply with remove requests within 10 calendar days and not "wait" awhile and then start broadcasting to them again. The mechanism you choose to use for

opt-out must remain working and be able to process requests for 30 calendar days after you broadcast the e-mail.

Your commercial e-mail must be identified as an advertisement and include the sender's valid physical postal address.

You can find consumer facts information about the FCC regulations at <http://www.fcc.gov/cgb/consumerfacts/canspam.html> and policy regulations at <http://www.fcc.gov/cgb/policy/canspam.html>

The FTC has an extensive website that covers the law in layman's terms and provides many useful links. The website contains information, not only for consumers, but for businesses as well. It can be found at <http://www.ftc.gov/spam>.

## **Obtaining e-mail marketing lists**

How then do you obtain an e-mail list to market to? There are many list companies that sell e-mail-marketing services/lists. Many of them claim they have obtained permission from the recipient to sell their e-mail address, or have third parties market to them. However, make sure that they are a reputable company.

If you do purchase a broadcast/list, follow the CAN-SPAM law and Washington State law to the letter! The federal law calls for fines up to \$11,000 for *every* e-mail violation, and even five years in prison.

Most of the reputable companies, such as *InfoUSA*, that sell e-mail lists will not allow you to broadcast the list yourself, nor ever see the actual e-mail addresses. They perform the broadcast directly from their internal systems. You provide the message content, website links for tracking, and blast date. They take care of the rest. Most provide detailed reporting of e-mail open rates, along with hyperlink click rates on your website addresses contained within the email. You can even obtain additional information such as name, mailing address, phone numbers, and demographic data.

Some bulk e-mail distribution companies will not permit bulk/commercial e-mail distribution using an outside purchased list. Others will allow it under very specific circumstances, but require documentation from you and the list company on how, when, and under what circumstances they obtained the addresses.

## **Building your own in-house list**

The best way to acquire e-mail addresses is directly from the prospect or client. In-store capture (including online) is the safest way. If you have a storefront or website, create a form that asks for their e-mail address.

Tell them specifically what you intend to do with their address. Are you going to send them sale promotion updates? Will they receive your eNewsletter? Are you going to send



them other specific information? Disclosure is key to opt-in for your consumer. When and if you decide to change the nature of the message from what you originally informed the consumer of, ask them if you may change the nature of your messages to them.

If you do have multiple reasons for capture, give the consumer choices with checkboxes. Inform them they can be removed at any time and you will not sell or rent their e-mail address. This is also known as “opt-in.”

After you capture their e-mail address, it is wise to send them a follow-up e-mail telling them what they signed up for, how to be removed, and to confirm that they want to continue to receive e-mail marketing-related messages from you. This is known as “double opt-in.” Although the law does not require opt-in and double opt-in, they are good ethical business practices.

E-mail marketing is not unlike other channels of marketing. There are specific laws and specific applications for use. Just as with bulk mail advertising, blowing out a shotgun, non-targeted mailing is a waste of money and time. Targeting specific consumers through one-to-one messages helps obtain and retain clients. The anti-spam laws haven't hurt legitimate businesses from e-mail marketing. They have, in fact, helped to reduce the amount of spam so that legitimate wanted messages can get through to your consumer or client.

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